

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In Re:

Chapter 11

FOOD MANAGEMENT GROUP, LLC,
KMA I, INC.
KMA II, INC.,
KMA III, INC.,
BRONX DONUT BAKERY, INC.,

Case No. 04-22880 (ASH)
Case No. 04-22890 (ASH)
Case No. 04-22891 (ASH)
Case No. 04-22892 (ASH)
Case No. 04-20312 (ASH)

Debtors.

(Jointly Administered)

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FOOD MANAGEMENT GROUP, LLC
KMA, I, INC., KMA II, INC., KMA III,
INC., and BRONX DONUT BAKERY, INC.

Plaintiffs,

Adversary Proceeding
Case No. 05-8636 (ASH)

V.

MATRIX REALTY GROUP, INC.,

Defendants.

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**STATEMENT OF ISSUES ON APPEAL AND
DESIGNATION OF THE RECORD ON APPEAL**

MATRIX REALTY GROUP, INC., the Defendant ("Matrix") by and through its counsel,
The Law Offices of Avrum J. Rosen, PLLC, as and for its Statement of Issues on Appeal and
Designation of the Record on Appeal respectfully represents as follows:

STATEMENT OF ISSUES ON APPEAL

1. Did the Court below err in finding that Matrix anticipatorily repudiated the contract, where Matrix duly cancelled the contract, when franchisor Dunkin' Donuts rejected Matrix/ZPG as purchaser of the franchised stores?

2. Did the Court below err in holding that Franchisor Dunkin' Donuts "conditionally accepted" Matrix/ZPG under the contract?
3. Did the Court below err in not finding that Matrix's cancellation of the contract upon the Franchisor's rejection was proper and not an anticipatory repudiation of the contract, because:
 - a. Dunkin' Donuts' rejection of Matrix/ZPG was a failure of an express condition precedent, permitting Matrix to cancel the contract?
 - b. Matrix/ZPG was not required to find a substitute shareholder/member or operations manager and reapply for Franchisor approval before electing to cancel upon rejection?
4. Did the Court below err in determining that Matrix's alleged dissatisfaction with the economic aspects of the contract was the reason for the repudiation of the contract where cancellation was proper based upon the failure of the approval condition regardless of Matrix's motivation?
5. Did the Court below err in finding that Matrix anticipatorily repudiated the contract where even if cancellation had not been permitted, Matrix did not anticipatorily repudiate the contract?
6. Did the Court below err in not determining that even if Matrix's cancellation of the contract constituted an anticipatory repudiation, Debtors waived that repudiation and elected to proceed with the contract and then repudiated the contract themselves by wrongfully and prematurely declaring Matrix in default, because:

- a. Debtors waived any anticipatory repudiation by Matrix when they affirmed the contract and prosecuted the June 29, 2005 hearing to compel acceptance by the Franchisor, and when they continued to demand performance of the contract thereafter?
 - b. Having waived any anticipatory repudiation by Matrix, Debtors unilateral declaration of a five-day deadline for Matrix to find a substitute member/shareholder or operations manager weeks before the projected July 31, 2005 closing date was unauthorized and patently unreasonable?
 - c. As of the date Debtors commenced their adversary proceeding declaring Matrix in default, Matrix had not reaffirmed any prior repudiation nor waived anticipatory repudiation by the Debtors?
 - d. Debtors, not Matrix, breached the contract by wrongfully declaring Matrix in default?
7. Did the Court below err in failing to find that the Plaintiff failed to prove the existence of a contract, complete, fully executed, and binding on Matrix, because:
- a. The Court below failed to find that the contract was not enforceable because it contained blank spaces that were never completed, and references to attachments that were never incorporated?
 - b. The Contract was never approved by the Court as required by the Bid

Procedures Order?

- c. The contract was intended to be between the debtors and non-party ZPG Group, not Matrix, who was not a signatory to the contract?
 - d. The Dunkin' Donuts Rider, which was incorporated by reference in the contract, and which was an essential pre-condition of the contract, was never finalized and executed?
8. Did the Court below err in not finding that the contract was induced by fraud and misrepresentation of the Debtors' principals and in the fraudulent bid of 64th Street which induced Matrix to increase its bid?
9. Did the Court below err in not finding that performance of the contract by the Plaintiff was rendered impossible, where significant assets promised to be sold to Matrix were no longer available because:
- a. It was undisputed that certain important assets that Debtors contracted to sell to Matrix could not be delivered?
 - b. The Court below erred in finding that the contract was "divisible" so as to excuse Debtors' misrepresentations and enforce the remainder of the contract against Matrix?
 - c. The disclaimers in the contract did not justify rejection of Matrix's defenses based on Debtors inability to perform the contract they made?

10. Did the Court below err in not holding that the Debtors failed to meet their burden of pleading and proof of their own ability to perform in this anticipatory repudiation case, where:
 - a. The bankruptcy court misapplied applicable New York law in relieving the Debtors of their obligation to demonstrate that they would have been ready, willing and able to perform the contract?
 - b. Debtors failed to plead and prove that they would have performed the contract but for Matrix's purported repudiation?
 - c. Matrix's purported repudiation did not render Debtors' performance impossible and thus did not excuse Debtors from their own burden of proving their ability to perform their part of the bargain?
11. Did the Court below err in denying Matrix's motion *in limine* based upon the December 15, 2005 Order nullifying the contract and based upon the doctrine of Judicial Estoppel?
12. Did the Court below err in denying Matrix's motion for recusal?
13. Did the Court below err in refusing to approve the Motion to approve the proposed compromise and settlement agreement with Matrix?
14. Did the Court below err in refusing to grant the motion for reconsideration of the motion to approve the settlement of the action?

15. Did the Court below err in refusing to grant or otherwise decide Matrix's motion for summary judgment?
16. Did the Court below err in refusing to reduce the damages against Matrix because:
 - a. The Court did not allow a reduction of damages for the past due 'remodeling costs' under the franchise agreements in the amount of at least \$4,500,000.00 despite the fact that such costs were the Debtors' obligations under the contract?
 - b. The Court refused to limit the damages to the contract deposit, despite language to that effect in the Bid Procedures Order?
 - c. The Court refused to apply the deposit of 64th Street, which should have been held by the Trustee and was released without a court order as mitigating its damages?
 - d. The Court refused to allow a credit for the inability to deliver 200 Westchester Avenue and 987-A Central Park Avenue?

DESIGNATION OF RECORD ON APPEAL

Matrix designates the following items as the Record on Appeal:

1. Documents from the Electronic Docket in this Adversary Proceeding [Designated by the Official Docket Numbers]:

<u>1</u>	<u>Complaint against Matrix Realty Group, Inc. Filed by Food</u>
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	<u>Management Group, LLC, KMA I, INC., KMA II, Inc., KMA-III, Inc., Bronx Donut Bakery, Inc.. (Attachments: # 1 Exhibit s "6" - "12") (Glucksman, James) (Entered: 07/21/2005)</u>
<u>2</u>	<u>Motion to Shorten Time to Answer Complaint</u> filed by James B. Glucksman on behalf of Bronx Donut Bakery, Inc., Food Management Group, LLC, KMA I, INC., KMA II, Inc., KMA-III, Inc.. (Glucksman, James) (Entered: 07/21/2005)
<u>4</u>	<u>Order Signed On 7/21/2005 Shortening Defendant's Time To Answer And Approving Related Relief (Related Doc # 2). (Neonakis, Alex) (Entered: 07/22/2005)</u>
<u>6</u>	<u>Answer to Complaint (Related Doc # 1), Counterclaim against all plaintiffs (related document(s)1) filed by M. David Graubard on behalf of Matrix Realty Group, Inc.. (Graubard, M.) (Entered: 08/10/2005)</u>
<u>7</u>	<u>Answer to Counterclaim (Related Doc # 6) (related document(s)6) filed by James B. Glucksman on behalf of Bronx Donut Bakery, Inc., Food Management Group, LLC, KMA I, INC., KMA II, Inc., KMA-III, Inc.. (Glucksman, James) (Entered: 08/12/2005)</u>

<u>8</u>	<u>Affidavit of Service of Reply to Counterclaims (related document(s)7) filed by James B. Glucksman on behalf of Bronx Donut Bakery, Inc., Food Management Group, LLC, KMA I, INC., KMA II, Inc., KMA-III, Inc.. (Glucksman, James) (Entered: 08/12/2005)</u>
<u>9</u>	<u>Motion for Summary Judgment filed by James B. Glucksman on behalf of Bronx Donut Bakery, Inc., Food Management Group, LLC, KMA I, INC., KMA II, Inc., KMA-III, Inc.. with hearing to be held on 9/1/2005 at 11:00 AM at Room 243A, White Plains Responses due by 8/29/2005, (Attachments: # 1 Application) (Glucksman, James) (Entered: 08/22/2005)</u>
<u>10</u>	<u>Statement of Undisputed Fact (related document(s)9) filed by James B. Glucksman on behalf of Bronx Donut Bakery, Inc., Food Management Group, LLC, KMA I, INC., KMA II, Inc., KMA-III, Inc.. (Glucksman, James) (Entered: 08/22/2005)</u>
<u>11</u>	<u>Memorandum of Law in Support of Motion for Summary Judgment (related document(s)9, 10) filed by James B. Glucksman on behalf of Bronx Donut Bakery, Inc., Food</u>

	<u>Management Group, LLC, KMA I, INC., KMA II, Inc., KMA-III, Inc.. (Glucksman, James) (Entered: 08/22/2005)</u>
<u>13</u>	<u>Cross Motion for Summary Judgment of Defendant Matrix Realty Group, Inc. for Summary Judgment Pursuant to F.R.Civ. P. 56(a) as Incorporated by Bankruptcy Rule 7056 with Supporting Affidavit of Glen Nelson, with Affidavit of Service, filed by M. David Graubard on behalf of Matrix Realty Group, Inc.. with hearing to be held on 11/17/2005 at 11:00 AM at Courtroom 520, White Plains Office (Attachments: # 1 Exhibit A (Purchase and Sale Agreement); Exhibit B (Dunkin' Brands letter dated May 25, 2005); Exhibit C (Dunkin' Brands letter dated June 8, 2005); and Exhibit D (Complaint)) (Graubard, M.) (Entered: 11/15/2005)</u>
<u>14</u>	<u>Motion to Substitute Attorney on consent of parties filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Rosen, Avrum) (Entered: 03/14/2006)</u>
<u>15</u>	<u>Order Signed On 3/15/2006 Granting Consent To Change Attorney (Related Doc # 14). (Neonakis, Alex) (Entered: 03/15/2006)</u>

16	<u>Motion for Summary Judgment by Chapter 11 Trustee filed by David S. Almeida on behalf of Janice Grubin. with hearing to be held on 5/4/2006 at 11:00 AM at Courtroom 520, White Plains Office Responses due by 4/17/2006, (Attachments: # 1 Proposed Order) (Almeida, David) (Entered: 03/27/2006)</u>
17	<u>Memorandum of Law in Support of Chapter 11 Trustee's Motion for Summary Judgment (related document(s)16) filed by David S. Almeida on behalf of Janice Grubin. (Almeida, David) (Entered: 03/27/2006)</u>
18	<u>Statement of Undisputed Material Facts in Support of Motion for Summary Judgment by the Chapter 11 Trustee Pursuant to Bankruptcy Local Rule 7056-1 filed by David S. Almeida on behalf of Janice Grubin. (Attachments: # 1 Exhibit A-- Management Agreement# 2 Exhibit B--64 East Sale Agreement# 3 Exhibit C--Representative Sample of a Franchise Agreement# 4 Exhibit D--Relevant Portions of March 7, 2006 Transcript# 5 Exhibit E--Relevant Portions of Transcript of Glen B. Nelson# 6 Exhibit F--Relevant Portions of the Richard Nieto Deposition Transcript# 7 Exhibit G--Relevant Portions of June 29, 2005</u>

	<u>Hearing Transcript# 8 Exhibit H--Relevant Portion of the March 15, 2006 Hearing Transcript) (Almeida, David) (Entered: 03/27/2006)</u>
<u>19</u>	<u>Declaration of David S. Almeida (related document(s)16) filed by David S. Almeida on behalf of Janice Grubin. (Almeida, David) (Entered: 03/27/2006)</u>
<u>20</u>	<u>Scheduling Order Signed On 3/23/2006. It is hereby Ordered as follows: Trustee shall file her Motion for Summary Judgment on or before March 27,2006. Matrix Realty Group Inc., shall file its response to Trustee's Motion for Summary Judgment and/or Motion for Summary Judgment on or before April 17,2006. Trustee shall file her reply brief and/or response to Matrix's Motion for Summary Judgment on or before May 1,2006. Hearing on the Motions for Summary Judgment to be held on May 4,2006 at 11:00 AM at Courtroom 520, White Plains Office (Neonakis, Alex) (Entered: 03/28/2006)</u>
<u>22</u>	<u>Motion for Summary Judgment and Opposition to Trustee's Motion for Summary Judgment (related document(s)16) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. with</u>

	<p><u>hearing to be held on 5/4/2006 at 11:00 AM at Courtroom 520, White Plains Office Responses due by 5/1/2006, (Attachments: # 1 Pleading Local Rule 7056-1 Statement# 2 Index List of Exhibits) (Rosen, Avrum) (Entered: 04/17/2006)</u></p>
<u>23</u>	<p><u>Notice of Motion to Set Hearing Motion for Summary Judgment (related document(s)22) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. with hearing to be held on 5/4/2006 at 11:00 AM at Courtroom 520, White Plains Office Objections due by 5/1/2006, (Rosen, Avrum) (Entered: 04/17/2006)</u></p>
<u>24</u>	<p><u>Memorandum of Law in Opposition to Trustee's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment (related document(s)16, 22) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. Objections due by 5/1/2006, (Rosen, Avrum) (Entered: 04/17/2006)</u></p>
<u>26</u>	<p><u>Reply to Motion Reply Memorandum in Support of Chapter 11 Trustee's Motion for Summary Judgment and in Opposition to Matrix Realty Group, Inc.'s Cross-Motion for Summary Judgment (related document(s)16, 22) filed by Janice Beth Grubin on behalf of Janice Grubin. (Attachments: # 1 Exhibit A-</u></p>

	<u>-Webpage from New York Department of State, Division of Corporations# 2 Exhibit B--May 10, 2005 Letter) (Grubin, Janice) (Entered: 05/01/2006)</u>
<u>27</u>	<u>Declaration of David S. Almeida (related document(s) 26) filed by Janice Beth Grubin on behalf of Janice Grubin. with hearing to be held on 5/4/2006 at 11:00 AM at Courtroom 520, White Plains Office (Grubin, Janice) (Entered: 05/01/2006)</u>
<u>28</u>	<u>Motion for Summary Judgment (related thereto) Chapter 11 Trustee's Motion for Entry of Order to Strike Affidavit of Richard Nieto and Matrix's Response to Local Rule 7056-1 Statement and to Deem Admitted Certain of Trustee's Material Facts filed by Janice Beth Grubin on behalf of Janice Grubin. (Attachments: # 1 Proposed Order) (Grubin, Janice) (Entered: 05/01/2006)</u>
<u>29</u>	<u>Statement Motion of Chapter 11 Trustee for an Order Shortening Time Pursuant to Bankruptcy Rules 2002(a)(2) and 9006(c) with Respect to Hearing on Chapter 11 Trustee's Motion for Entry of Order to Strike Affidavit of Richard Nieto and Matrix's Response to Local Rule 7056-1 Statement filed by Janice</u>

	<p><u>Beth Grubin on behalf of Janice Grubin. (Attachments: # 1 Exhibit 1--Declaration of David S. Almeida in Support of the Motion of the Chapter 11 Trustee for an Order Shortening Time Pursuant to Bankruptcy Rules 2002(a)(2) and 9006(c) with Respect to Hearing on Chapter 11 Trustee's Motion to Strike# 2 Proposed Order) (Grubin, Janice) (Entered: 05/01/2006)</u></p>
30	<p><u>Response to Motion Trustee's Response to Matrix's Local Rule 7056-1 Statement of Undisputed Material Facts in Support of Motion for Summary Judgment (related document(s)22) filed by Janice Beth Grubin on behalf of Janice Grubin. with hearing to be held on 5/4/2006 at 11:00 AM at Courtroom 520, White Plains Office (Grubin, Janice) (Entered: 05/01/2006)</u></p>
33	<p><u>Notice of Motion to Set Hearing Notice of Chapter 11 Trustee's Motion for Entry of Order to Strike Affidavit of Richard Nieto and Matrix's Response to Local Rule 7056-1 Statement and to Deem Admitted Certain of Trustee's Material Facts (related document(s)28) filed by Janice Beth Grubin on behalf of Janice Grubin. with hearing to be held on 5/4/2006 at 11:00 AM at Courtroom 520, White Plains Office Objections due by 5/3/2006, (Grubin, Janice) (Entered: 05/02/2006)</u></p>

35	<u>Affirmation in opposition to the trustee's motion to strike (related document(s)28) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. with hearing to be held on 5/4/2006 at 11:00 AM at Courtroom 520, White Plains Office (Rosen, Avrum) (Entered: 05/03/2006)</u>
37	<u>Scheduling Order signed on 5/16/2006. It Is Hereby Ordered That A Joint Pretrial Order Shall Be Submitted By 6/12/2006. Memorandum Of Law Must Be Submitted By 6/12/2006. The Trial Will Commence On 6/16/2006 at 9:30 a.m. And Continue, If Necessary, On 6/19/2006 At 9:30 a.m. And 6/20/2006 At 2:30 p.m. (Neonakis, Alex) (Entered: 05/17/2006)</u>
39	<u>Motion for Stay Pending Appeal filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. with hearing to be held on 5/30/2006 at 03:00 PM at Courtroom 520, White Plains Office (Rosen, Avrum) (Entered: 05/26/2006)</u>
40	<u>Memorandum of Law in Support of Motion to Stay Trial Pending Appeal (related document(s)39) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Rosen, Avrum)</u>

	<u>(Entered: 05/26/2006)</u>
<u>45</u>	<u>Objection to Motion Objection of the Chapter 11 Trustee to Matrix Realty Group Inc.'s Application in Support of a Stay of the Trial in Connection with the Above-Referenced Action Pending the Determination of the Appeal (related document(s)39) filed by Janice Beth Grubin on behalf of Janice Grubin. with hearing to be held on 5/30/2006 at 03:00 PM at Courtroom 520, White Plains Office (Attachments: # 1 Exhibit A--Unpublished Decisions# 2 Exhibit B--Trustee's Objection to Request to Appeal) (Grubin, Janice) (Entered: 05/30/2006)</u>
<u>47</u>	<u>Ex Parte Motion to Shorten Time filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Attachments: # 1 Exhibit Proposed Order# 2 Exhibit Memo of Law in Support# 3 Exhibit Affidavit in support# 4 Exhibit Attorney's Affirmation Good Faith in Support of recusal# 5 Exhibit Transcript# 6 Exhibit Transcript# 7 Exhibit Transcript# 8 Exhibit Affirmation in support shorten time) (Rosen, Avrum) (Entered: 06/06/2006)</u>
<u>48</u>	<u>Letter regarding Court's request for transcripts filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Rosen, Avrum)</u>

	<u>(Entered: 06/07/2006)</u>
<u>49</u>	<u>Objection to Motion Chapter 11 Trustee's Objection to Matrix's Motion Pursuant to 28 U.S.C. Sections 144 and 455 Seeking Recusal of This Court (related document(s)47) filed by David S. Almeida on behalf of Janice Grubin. (Almeida, David) (Entered: 06/08/2006)</u>
<u>50</u>	<u>Memorandum of Law Plaintiffs' Trial Brief filed by David S. Almeida on behalf of Janice Grubin. (Attachments: # 1 Exhibit A--Portion of Glen Nelson September 23, 2005 Affidavit) (Almeida, David) (Entered: 06/12/2006)</u>
<u>51</u>	<u>Memorandum of Law Defendant's Trial Memorandum of Law filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Rosen, Avrum) (Entered: 06/13/2006)</u>
<u>52</u>	<u>Statement Joint PreTrial Order filed by David S. Almeida on behalf of Janice Grubin, Matrix Realty Group, Inc.. (Attachments: # 1 Exhibit A--Plaintiffs' List of Exhibits# 2 Exhibit B--Defendant's List of Exhibits) (Almeida, David) (Entered: 06/13/2006)</u>

<u>55</u>	<u>Statement Table of Authorities in connection with Defendant's</u> <u>trial Memorandum of Law filed by Avrum J. Rosen on behalf of</u> <u>Matrix Realty Group, Inc.. (Rosen, Avrum) (Entered:</u> <u>06/13/2006)</u>
<u>59</u>	<u>Memorandum And Order Signed On 6/14/2006 Denying Motion</u> <u>For Recusal. (related document(s)47) (Neonakis, Alex) (Entered:</u> <u>06/14/2006)</u>
<u>60</u>	<u>Motion to Authorize Motion in Limine to bar argument that</u> <u>Matrix Realty Group orally anticipatorily repudiated the</u> <u>contract filed by Avrum J. Rosen on behalf of Matrix Realty</u> <u>Group, Inc.. with hearing to be held on 6/16/2006 at 10:30 AM at</u> <u>Courtroom 520, White Plains Office (Rosen, Avrum) (Entered:</u> <u>06/14/2006)</u>
<u>61</u>	<u>Motion to Authorize Motion in Limine to Bar Argument that</u> <u>Matrix Realty Group is the Alter-Ego of ZPG Restaurant</u> <u>Associates LLC filed by Avrum J. Rosen on behalf of Matrix</u> <u>Realty Group, Inc.. with hearing to be held on 6/16/2006 at 10:30</u> <u>AM at Courtroom 520, White Plains Office (Rosen, Avrum)</u>

	<u>(Entered: 06/14/2006)</u>
<u>62</u>	<u>Motion to Authorize Motion in Limine to bar Argument that the Sales Contract was not deemed null and void by Court's December 15, 2005 Order filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. with hearing to be held on 6/16/2006 at 10:30 AM at Courtroom 520, White Plains Office (Rosen, Avrum) (Entered: 06/14/2006)</u>
<u>64</u>	<u>Motion to Authorize Plaintiff's Motion In Limine to Bar Any Mention of 64 East's Alleged Fraud filed by David S. Almeida on behalf of Janice Grubin. with hearing to be held on 6/16/2006 at 10:30 AM at Courtroom 520, White Plains Office (Almeida, David) (Entered: 06/14/2006)</u>
<u>65</u>	<u>Motion to Authorize Plaintiff's Motion In Limine to Exclude the Alleged Defense of Impossibility filed by David S. Almeida on behalf of Janice Grubin. with hearing to be held on 6/16/2006 at 10:30 AM at Courtroom 520, White Plains Office (Almeida, David) (Entered: 06/14/2006)</u>
<u>66</u>	<u>Motion to Authorize Plaintiff's Motion In Limine to Bar</u>

	<u>Argument Regarding Krischer's Disapproval Excusing Matrix's Performance filed by David S. Almeida on behalf of Janice Grubin. with hearing to be held on 6/16/2006 at 10:30 AM at Courtroom 520, White Plains Office (Almeida, David) (Entered: 06/14/2006)</u>
<u>67</u>	<u>Motion to Authorize Plaintiff's Motion in Limine to Exclude the Alleged Defense of Anticipatory Repudiation filed by David S. Almeida on behalf of Janice Grubin. with hearing to be held on 6/16/2006 at 10:30 AM at Courtroom 520, White Plains Office (Almeida, David) (Entered: 06/14/2006)</u>
<u>76</u>	<u>Transcript Of Trial filed by U.S. Bankruptcy Court. (Neonakis, Alex) (Entered: 08/18/2006)</u>
<u>68</u>	<u>Joint Pretrial Order Signed On 6/21/2006 with hearing to be held on 6/16/2006 at 10:30 AM at Courtroom 520, White Plains Office and continue,if necessary, on 6/19/2006 at 8:30 a.m., and 6/20/2006, at 2:30 p.m. (Neonakis, Alex) (Entered: 06/23/2006)</u>
<u>72</u>	<u>Transcript of Hearing held on June 16, 2006, Re: Trial filed by TypeWrite Word Processing Service. (Braithwaite, Kenishia)</u>

	<u>(Entered: 08/11/2006)</u>
<u>73</u>	<u>Transcript of Hearing held on June 19, 2006, Re: Trial filed by</u> <u>TypeWrite Word Processing Service. (Braithwaite, Kenishia)</u> <u>(Entered: 08/11/2006)</u>
<u>82</u>	<u>Transcript of Hearing held on June 20, 2006, Re: Trial filed by</u> <u>TypeWrite Word Processing Service. (Braithwaite, Kenishia)</u> <u>(Entered: 08/31/2006)</u>
<u>70</u>	<u>Memorandum of Law Plaintiff's Post-Trial Brief (related</u> <u>document(s)69) filed by David S. Almeida on behalf of Janice</u> <u>Grubin. (Attachments: # 1 Exhibit Unpublished Cases) (Almeida,</u> <u>David) (Entered: 07/20/2006)</u>
<u>81</u>	<u>Transcript of Hearing held on July 20, 2006, Re: Status</u> <u>Conference filed by TypeWrite Word Processing Service.</u> <u>(Braithwaite, Kenishia) (Entered: 08/29/2006)</u>
<u>77</u>	<u>Memorandum of Law Post Trial Memorandum of Law in</u> <u>Opposition to Plaintiff's Memorandum of Law (related</u> <u>document(s)64, 60, 67, 62, 65, 66, 61) filed by Avrum J. Rosen on</u>

	<u>behalf of Matrix Realty Group, Inc.. (Rosen, Avrum) (Entered: 08/21/2006)</u>
<u>83</u>	<u>Reply to Motion Plaintiff's Post-Trial Reply Brief filed by David S. Almeida on behalf of Janice B. Grubin, as Chapter 11 Trustee. Sur-Reply due by 9/21/2006, (Almeida, David) (Entered: 09/11/2006)</u>
<u>85</u>	<u>Reply Memorandum of Law Sur-Reply Post-Trial Memorandum of Law filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Rosen, Avrum) (Entered: 09/21/2006)</u>
<u>86</u>	<u>Affidavit of Service (related document(s)85) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Rosen, Avrum) (Entered: 09/22/2006)</u>
<u>87</u>	<u>Transcript of Hearing Held on August 17, 2006, Re: Status Conference filed by TypeWrite Word Processing Service. (Braithwaite, Kenishia) (Entered: 10/12/2006)</u>
<u>91</u>	<u>Memorandum of Law Defendant's Supplemental Post-Trial Memorandum of Law filed by Avrum J. Rosen on behalf of</u>

	<u>Matrix Realty Group, Inc.. (Attachments: # 1 Memorandum of Law continued# 2 Memorandum of Law Continued# 3 Exhibit A-Chart of Store Status) (Rosen, Avrum) (Entered: 02/23/2007)</u>
<u>92</u>	<u>Memorandum of Law Plaintiff's Supplemental Post-Trial Response Brief filed by David S. Almeida on behalf of Janice B. Grubin, as Chapter 11 Trustee. (Attachments: # 1 Exhibit A--Chart) (Almeida, David) (Entered: 04/09/2007)</u>
<u>95</u>	<u>Written Opinion: Decision After Trial signed on 7/25/2007 that the Debtors are Entitled to Judgment Against Matrix on the Issue of Liability for Breach of the Matrix Contract. (Correa, Mimi) (Entered: 07/25/2007)</u>
<u>99</u>	<u>Memorandum of Law submitted by Defendant in Connection with Issues of Damages filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Attachments: # 1 Exhibit "A" Contract# 2 Exhibit "B" Motion# 3 Exhibit "C" Bidding Procedures# 4 Exhibit "D" Consent Order) (Rosen, Avrum) (Entered: 10/16/2007)</u>

<u>101</u>	<u>Memorandum of Law Chapter 11 Trustee's Memorandum of Law Regarding Damages filed by David S. Almeida on behalf of Janice B. Grubin. (Attachments: # 1 Errata 1# 2 Exhibit 2# 3 Exhibit 3) (Almeida, David) (Entered: 10/19/2007)</u>
<u>103</u>	<u>Supplemental Opposition Brief on Measure of Damages filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Rosen, Avrum) (Entered: 11/06/2007)</u>
<u>105</u>	<u>Response to Defendant's Supplemental Damages Issues Brief filed by David S. Almeida on behalf of Janice B. Grubin. (Almeida, David) (Entered: 11/13/2007)</u>
<u>107</u>	<u>Written Opinion: Decision Signed on 12/10/2007 Allowing Damages in Excess of the Bidding Deposit. (Correa, Mimi) (Entered: 12/10/2007)</u>
<u>111</u>	<u>Transcript of Hearing Held on 1/17/08 Re: Status Conference, Applications and Final Argument on Damages filed by TypeWrite Word Processing Service. (Richards, Beverly) (Entered: 02/26/2008)</u>
<u>119</u>	<u>Final Order on Liability and Damages signed on 5/28/2008.</u>

	<u>(related document(s)107) (Correa, Mimi) (Entered: 05/28/2008)</u>
<u>120</u>	<u>Final Judgment signed on 5/28/2008 Against Matrix Realty Group, Inc. and In Favor of Plaintiff, Janice B. Grubin as Chapter 11 Trustee, in the amount of \$9,196,114.11.</u> <u>JUDGMENT INDEX NUMBER WPBC 08,0007. Modified on 6/5/2008 (Correa, Mimi). (Entered: 05/28/2008)</u>
<u>122</u>	<u>Notice of Appeal (related document(s)120, 107, 119, 59, 95) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Attachments: # 1 Exhibit "A" Judgment dated May 28, 2008# 2 Exhibit "B" Final Order dated May 28, 2008# 3 Exhibit "C" Transcript of hearing held on January 17 2008# 4 Exhibit "D" Decision Allowing Damanges dated December 10, 2007# 5 Exhibit "E" Decision After Trial dated July 25, 2007# 6 Exhibit "F" Memorandum and Order Denying Motion for Recusal dated June 14, 2006# 7 Exhibit "G" Order denying motion for reargument dated April 4, 2006# 8 Exhibit "H" Order Denying Compromise and Settlement dated March 10, 2006)(Rosen, Avrum) (Entered: 06/05/2008)</u>
	<u>Receipt of Notice of Appeal(05-08636-ash) [appeal,97] (255.00)</u>

	<u>Filing Fee. Receipt number 4822480. Fee amount 255.00. (U.S. Treasury) (Entered: 06/05/2008)</u>
<u>123</u>	<u>Civil Cover Sheet from U.S. District Court, Case Number: (related document(s)122) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Attachments: # 1 Exhibit Statement of Related Pending Appeal)(Rosen, Avrum) (Entered: 06/06/2008)</u>
<u>124</u>	<u>Affidavit of Service (related document(s)122) filed by Avrum J. Rosen on behalf of Matrix Realty Group, Inc.. (Rosen, Avrum) (Entered: 06/08/2008)</u>

2. Designation of the following Documents in the Debtors' main case:

<u>584</u>	<u>Motion to Authorize and Approve Compromise and Settlement of Adversary Proceeding Against Matrix Realty Group, Inc. filed by Janice Beth Grubin on behalf of Janice B. Grubin. with hearing to be held on 3/7/2006 at 10:00 AM at Courtroom 520, White Plains Office Responses due by 2/28/2006, (Attachments: # 1 Proposed Order) (Grubin, Janice) (Entered: 02/10/2006)</u>
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609	<p><u>Opposition of Anastasios "Tom" Gianopoulos To Motion of Chapter 11 Trustee Authorizing and Approving Compromise and Settlement of Adversary Proceeding Against Matrix Realty Group (related document(s)584) filed by Rosemarie E. Matera on behalf of Anastasios Gianopoulos. with hearing to be held on 3/7/2006 (check with court for location) (Attachments: # 1 AOS - Opposition to Motion of Chapter 11 Trustee Authorizing & Approving Compromise and Settlement of Adversary Proceeding Against Matrix Realty Group) (Matera, Rosemarie) (Entered: 03/01/2006)</u></p>
616	<p><u>Objection to Motion (related document(s)584) filed by Ronald Scott Beacher on behalf of Questech Financial, LLC. with hearing to be held on 3/7/2006 at 10:00 AM at Courtroom 520, White Plains Office Objections due by 3/3/2006, (Attachments: # 1 Exhibit A to Objection of Questech Financial, LLC to the Motion of Chapter 11 Trustee Pursuant to Bankruptcy Rule 9019(A) Authorizing and Approving the Compromise and Settlement of Adversary Proceeding against Matrix Realty Group, Inc.# 2 Exhibit B to Objection of Questech Financial, LLC to the Motion of Chapter 11 Trustee Pursuant to</u></p>

	<p><u>Bankruptcy Rule 9019(A) Authorizing and Approving the</u></p> <p><u>Compromise and Settlement of Adversary Proceeding against</u></p> <p><u>Matrix Realty Group, Inc.# 3 Exhibit C to Objection of Questech</u></p> <p><u>Financial, LLC to the Motion of Chapter 11 Trustee Pursuant to</u></p> <p><u>Bankruptcy Rule 9019(A) Authorizing and Approving the</u></p> <p><u>Compromise and Settlement of Adversary Proceeding against</u></p> <p><u>Matrix Realty Group, Inc.) (Beacher, Ronald) (Entered:</u></p> <p><u>03/03/2006)</u></p>
<u>633</u>	<p><u>Order Signed On 3/10/2006 Denying Compromise And</u></p> <p><u>Settlement Of Adversary Proceeding Against Matrix Realty</u></p> <p><u>Group,Inc. (Related Doc # 581). (Neonakis, Alex) (Entered:</u></p> <p><u>03/10/2006)</u></p>
<u>641</u>	<p><u>Affidavit of Robert L. Rattet, Esq. Relating to Bidding and</u></p> <p><u>Offers Made for Debtors' Assets filed by Joseph Corneau on</u></p> <p><u>behalf of Rattet, Pasternak & Gordon Oliver, LLP. (Corneau,</u></p> <p><u>Joseph) (Entered: 03/14/2006)</u></p>
<u>651</u>	<p><u>Motion to Reconsider FRCP 60 or FRBP 3008 This Courts Order</u></p> <p><u>denying the motion to settle this action pursuant to Rule 9019</u></p>

(related document(s)584) filed by Avrum J. Rosen on behalf of
Matrix Realty Group, Inc.. Responses due by 3/30/2006,
(Attachments: # 1 Exhibit A Transcript of March 7, 2006
Hearing# 2 Exhibit B Dunkin Doughnuts Bid Letter) (Rosen,
Avrum) (Entered: 03/20/2006)

3. The handwritten Order denying the Notice of Motion by Submission for
Reargument pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024 of this
Court's Decision and Order Denying the Application by Matrix and the Chapter 11
Trustee for an Order Resolving the Adversary Proceeding Pursuant to Bankruptcy
Rule 9019 dated April 4, 2006. . [Docket No. 665 in the Main Case].

4. DEFENDANT'S LIST OF EXHIBITS IN EVIDENCE

<u>Exhibit No.</u>	<u>Title of Document</u>
<u>A.</u>	<u>Memorandum to FMG professionals and examiner from Keen Strategic</u> <u>Advisors LLC, dated March 3, 2005.</u>
<u>B.</u>	<u>E-mail from Craig Fox to James Glucksman, dated August 12, 2005, at 11:12 A.M.</u> <u>and Bates stamped 05427.</u>
<u>C.</u>	<u>E-mail from Ronald Deegan to Craig Fox dated March 5, 2005, Bates stamped</u> <u>05439</u>
<u>D.</u>	<u>Nodine Letter</u>
<u>E.</u>	<u>Team Flyer, Attached as Bates stamp 04681-04682 - mail from Robert Tramantano</u> <u>on Jan. 6, 2005.</u>
<u>F.</u>	<u>Transcript of the motion to sell before this Court on December 15, 2005.</u>

G. Transcript of the Nov. 23, 2005 Hearing before this Court.

H. E-mail from Harold Bordwin, dated Feb. 12, 2005, at approx. 7:00 PM, dated Bates stamped 03296-09299.

I. Emails.

Exhibit No. 1

To: Peter.marrinan@dunkinbrands.com

cc: Patty.DeLosh@dunkinbrands.com, joe.benny@dunkinbrands.com, redcardjoe, Matrix Realty

Date: 2/22/05

Exhibit No. 2

Email

To: Matrix Realty

Subj: Fwd: Your inquiry re: Locations in New York

Date: 3/1/05

Exhibit No. 3

Email

To: Matrix Realty

Subj: 1580 and Dunkin

Date: 3/2/2005

Exhibit No. 4

Email

To: scs1010

Subj. Fwd. Adrian or Glen

Date. 3/4/05

cc: Matrix Realty, airfrcf15

Exhibit No. 5

Email from Robert Tramantano,

Keen Consultants

To: dkbkzk@aol.com
Subj: Food Management/Dunkin Donuts
Date: 3/7/2005

Exhibit No. 6

Email

To: MatrixRealty
Subj: Dunkin
Date: 3/7/2005

Exhibit No. 7

Email

To: joe.benney@dunkinbrands.com
Subj: Fwd. I want to confirm our meeting
Date: 3/26/05

Exhibit No. 8

Email

To: Dkbkzk
From: Dkbkzk
Subj: Davis to supply a copy of the Judge's Order
Date: 3/28/2005 1:00:51 PM Eastern Standard Time

Exhibit No. 9

Email

To: joe.benney@dunkinbrands.com
cc: Matrix Realty
Subj: Michelle Chang, in store experience
Date: 3/30/05

Exhibit No. 10

Email

To: cfox@keenconsultants.com
Subj: (no subject)
Date: 4/7/05

Exhibit No. 11

Email

To: joe.benney@dunkinbrands.com
Subj: Reminer
Date: 4/12/05

Exhibit No. 12

Email

To: Joe.Benney@dunkinbrands.com
cc: [Matrix Realty](#)
Subj: Reminder
Date: 4/14/05

Exhibit No. 13

Email from Dan Krischner

To: hwshure@pull.com
cc: [Dkbkzk](#)
Date: 4/17/05

Exhibit No. 14

Email

To: rtramantano@keenconsultants.com
cc: Vgrillo@Starbucks.com
Subj: Fwd: FMG - Lease Provisions
Date: 4/18/05

Exhibit No. 15

Email from Dan Krischer

To: garym@xtramart.com

Date: 4/18/05

Exhibit No. 16

Email from Dan Krischer

To: airfrcf15

Date: 4/19/05

Exhibit No. 17

Email

To: janice0719

cc: ginasa225

Subj: Dunkin, Approval Process

Date: 4/21/05

Exhibit No. 18

Email

To: janice0719

Subj: Fwd: janice e-mail address

Date: 4/21/05

Exhibit No. 19

Email

To: janice0719

cc: edwin111, airfrcf15, ginasa225, Matrix Realty

Subj: Monday

Date: 4/21/05

Exhibit No. 20

Email from Dan Krischer

To: rlr@rattettlaw.com

cc: edwin1411, ginasa225, janice07119, airfrcf15, vgr5672516

Date: 4/21/05

Exhibit No. 21

Email

To: Matrix Realty
cc: airfrcf15
Subj: Adriene, 38 Mill Road, Master Lease
Date: 4/21/05

Exhibit No. 22

Email from Dan Krischer, regarding 23rd Street

To: rlr@rattetlaw.com
cc: JCC@rattetlaw.com
Date: 4/21/05

Exhibit No. 23

Email from Dan Krischer

To: Bill.Boder@dunkinbrands.com
cc: rdegen@dti.net
Date: 4/23/05

Exhibit No. 24

Email

To: JCC@rattetlaw.com
cc: rdegen@dti.net, RLR@rattetlaw.com, vgr5672516, Matrix Realty
Subj: (no subject)
Date: 4/23/05

Exhibit No. 25

Email

To: Matrix Realty
Subj: Glen
Date: 4/24/05

Exhibit No. 26

Email

To: hwshure@pullcom.com
cc: rlr@rattetlaw.com, jss@rattetlaw.com, vgr5672516, cfox@keenconsultants.com, Dkbkzk
Subj: Access to the store
Date: 4/26/05

Exhibit No. 27

Email

To: rdegen@dti.net
Subj: (No subject)
Date: 4/26/05

Exhibit No. 28

Email

To: Dkbkzk
Subj: 12% or base rent at Tuckahoe Road, Craig Fox
Date: 4/26/05

Exhibit No. 29

Email

To: hwshure@pullcom.com
cc: rlr@rattetlaw.com, jcc@rattetlaw.com, cfox@keenconsultants.com, Matrix Realty,
rdengen@dti.net
Subj: Response to letter
Date: 4/27/2005

Exhibit No. 30

Email

To: Matrix Realty
Subj: Adrieene
Date: 4/28/05

Exhibit No. 31

Email

To: rlr@rattetlaw.com
Subj: (no subject)
Date: 4/28/05

Exhibit No. 32

Email

To: Matrix Realty
Subj: For Glen
Date: 4/28/05

Exhibit No. 33

Email

To: stuartwrba@cox.net
Subj: Dan Krischner
Date: 4/28/05

Exhibit No. 34

Email

To: Matrix Realty
Subj: Fwd: Landlord Waiver and lease issues
Date: 4/29/05

Exhibit No. 35

Email

To: airfrcf15
cc: stuartwrba@cox.net, Dkbkzk
Subj: Fwd: Landlord Waiver
Date: 4/29/05

Exhibit No. 36

Email

To: Matrix Realty
Subj: Office space, Glen
Date: 4/29/05

Exhibit No. 37

Email

To: airfref15
Subj: Fwd: Remodels
Date: 5/1/05

Exhibit No. 38

Email

To: Dkbkzk
Subj: Fwd: Trucks and Franchise agreements
Date: 5/1/05

Exhibit No. 39

Email

To: Dkbkzk
From: Dkbkzk
Subj: Fwd. Trucks and Franchise agreements.
Date: 5/1/2005 3:57:14 pm Eastern Standard Time

Exhibit No. 40

Email

To: cfox@keensonsultants.com
cc: JCC@rattetlaw.com, rlr@rattetlaw.com
Subj: Franchise Agreements
Date: 5/2/2005

Exhibit No. 41

Email

To: JCC@rattetlaw.com

Subj: Fwd: Trucks and Franchise agreements

Date: 5/2/05

Exhibit No. 42

Email

To: rdegen@dti.net

cc: hwshure@pullcom.com

Subj: Fwd. Attached response to Dunkin

Date: 5/2/05

Exhibit No. 43

Email

To: JCC@rattetlaw.com

Subj: Fwd: one more thing

Date: 5/2/05

Exhibit No. 44

Email from Airfrcf15

To: Dkbkzk

Subj: Fwd: 260 Halstead Avenue

Date: 5/2/05 2:08:49 PM Eastern StandardTime

Exhibit No. 45

Email

To: hwshure@pullcom.com

cc: jcc@rattetlaw.com

Subj: Thanks

Date: 5/3/05

Exhibit No. 46

Email

To: rdegen@dti.net

cc: vgr5672516, Dkbkzk
Subj: Def lists
Date: 5/3/05

Exhibit No. 47

Email

To: jreuther@optonline.net
cc: ginasa225, janice0719
Subj: A couple of other things
Date: 5/3/05

Exhibit No. 48

Email

To: JCC@rattetlaw.com
Subj: (No subject)
Date: 5/3/05

Exhibit No. 49

Email

To: jreuther@optonline.net
cc: ginasa225, janice0719
Subj: P and L
Date: 5/3/05

Exhibit No. 50

Email

To: airfrcf15
cc: garym@xtramart.com
Subj: 42 Lake Street
Date: 5/4/2005

J. Emails

Exhibit No. 1

Email

To: airfrcf15
cc: Dkbbkzk
Subj: LL issue for 2620
Date: 5/5/05

Exhibit No. 2

Email

To: Bill.Bode@dunkinbrands.com
cc: rdegen@dti.net
Subj: Fwd: Dunkin Documentation package
Date: 5/6/05

Exhibit No. 3

Email

To: Bill.Bode@dunkinbrands.com
Subj: Meeting
Date: 5/6/05

Exhibit No. 4

Email

To: Bill.Bode@dunkinbrands.com
Subj: Dunkin Documentation package
Date: 5/6/2005

Exhibit No. 5

Email

To: Matrix Realty
Subj: Adrieene, for Glen and Rick
Date: 5/7/2005

Exhibit No. 6

Email

To: JCC@rattetlaw.com
cc: Matrix Realty
Subj: Fwd: Dunkin Package
Date: 5/9/05

Exhibit No. 7

Email

To: JCC@rattetlaw.com
Subj: Re: 2520 Central Park Avenue
Date: 5/9/05

Exhibit No. 8

Email

To: hwshure@pullcom.com
Subj: Thursday Court
Date: 5/9/05

Exhibit No. 9

Email

To: Bill.Bode@dunkinbrands.com
Subj: Meeting next week
Date: 5/9/05

Exhibit No. 10

Email

To: martin.kera@verizon.net
cc: litzatty, Matrix Realty, cfox@keenconsultants.com, jcc@rattetlaw.com,
rlr@rattetlaw.com, rdegen@dti.net, jwshure@pullcom.com, vgr5672516
Subj: Regarding the FMG Sale
Date: 5/10/05

Exhibit No. 11

Email

To: martin.kera@verizon.net
cc: [litzatty](#), [airfref15](#)
Subj: Rider
Date: 5/10/05

Exhibit No. 12

Exhibit No.

Email

To: jcc@rattetlaw.com
cc: [edwin1411](#), [vgr5672516](#), [janice0719](#)
Subj: I told your clients
Date: 5/11/05

Exhibit No. 13

Email

To: margin.kera@verizon.net
cc: [litzatty](#), [ginasa225](#), [janice0719](#), [vgr5672516](#), [airfref15](#)
Subj: New LLC's
Date: 5/11/05

Exhibit No. 14

Email

To: jcc@rattetlaw.com
cc: [dkbkzk](#)
Subj: questions
Date: 5/11/05

Exhibit No. 15

Email

To: Bill.Bode@dunkinbrands.com
cc: rdegen@dti.net
Subj: Re: Buyer's package
Date: 5/12/05

Exhibit No. 16

Email

To: Bill.Totherow@ge.com
cc: Bill.Bode@dunkinbrands.com
Subj: Sales numbers
Date: 5/12/05

Exhibit No. 17

Email

To: Dkbkzk
Subj: Re: Agenda Items for DD meeting Tuesday
Date: 5/12/05

Exhibit No. 18

Email

To: Bill.Bode@dunkinbrands.com
cc: Matrix Realty
Subj: Financial Back up
Date: 5/13/2005

Exhibit No. 19

Email

To: Matrix Realty
Subj: Re: New LLC's/Adrienne
Date: 5/13/05

Exhibit No. 20

Email

To: Bill.Bode@dunkinbrands.com
cc: Matrix Realty
Subj: Financial Back up
Date: 5/13/05

Exhibit No. 21

Email

To: Matrix Realty
Subj: Adrienne
Date: 5/14/05

Exhibit No. 22

Email

To: jwshure@pullcom.com
cc: martin.kera@verizon.net, lizatty, jcc@rattetlaw.com
Subj: Fwd: I told your clients
Date: 5/14/05

Exhibit No. 23

Email

To: hwshure@pulcom.com
cc: martin.kera@verizon.net, lizatty, jcc@rattetlaw.com
Subj: Fwd: I told your clients
Date: 5/14/05

Exhibit No. 24

Email

To: hwshure@pulcom.com
cc: martin.kera@verizon.net, lizatty, jcc@rattetlaw.com
Subj: Fwd: I told your clients
Date: 5/14/05

Exhibit No. 25

Email

To: vortek04@yahoo.com
Subj: Fwd: Def list, 2501 3rd Ave., CPL, Today
Date: 5/14/2005

Exhibit No. 26

Email

To: rdegen@dti.net
cc: martin.kera@verizon.net, litzatty
Subj: Fwd: Financial Back up, and your letter
Date: 5/16/05

Exhibit No. 27

Email

To: hwshure@pullcom.com
cc: martin.kera@verizon.net
Subj: Dan Krischer
Date: 5/17/05

Exhibit No. 28

Email

To: jcc@rattettlaw.com
Subj: Store Visit Listing
Date: 5/18/05

Exhibit No. 29

Email

To: ecmgtgrp@earthlink.net
Subj: Re: Various
Date: 5/18/05

Exhibit No. 30

Email

To: martin.kera@verizon.net
cc: litzatty
Subj: Fwd: Dunkin Donuts - Don Wolfson
Date: 5/20/05

Exhibit No. 31

Email

To: Matrix Realty
cc: edwin1411
Subj: Fwd: dunkin donuts wk ending 5/22/05, Adrienne
Date: 5/24/05

Exhibit No. 32

Email from Bill.totherow@ge.com

To: Dkbkzk@ge.com
Subj: Re: G.E.
Date: 6/2/2005 4:24:20PM Eastern Standard Time

- K. QuesTech Objection to Break Up Fee
- L. DD Objection to Break Up Fee
- M. Transcript of March 24, 2005, Hearing
- N. Letter to All Potential Bidders in Bankruptcy Auction of KMA et al, dated April 7, 2005
- O. Letter to Ronald D. Degen, Esq. dated September 6, 2005
- P. Deposition of Robert L. Rattet dated May2, 2006.
- Q. DD Rider to Contract
- R. Letter to Thomas R. Borek dated March 22, 2005
- S. Form of Purchase and Sale Agreement Between 64 E. 126th Street and KMA I Inc., et al.
- T. Reserved
- U. Form of Purchase and Sale Agreement Between ZPG Restaurant Associates, LLC and KMA I Inc, et al.
- V. Objection of 64th Street to TBG Contract
- W. Letter to Robert Tramantano dated March 9, 2006

- X. Final Purchase and Sales Agreement dated November 7, 2005
- Y. Letter to Janice B. Grubin, Esq., Trustee dated December 30, 2005
- Z. Krischer and Nelson Executive Bios
- AA. Trustee's Motion to Authorize TBG Sale and Related Relief
- BB. Supplemental Statement of DD in Support of Trustee
- CC. Twelfth Interim Report of Examiner
- DD. Objection of Taco Bell to Motion to Approve Contract
- EE. ZPG Proposal to DD
- FF. Rattet 2004 Exam
- GG. Eighth Interim Report of Examiner
- HH. Eleventh Interim Report of Examiner
- II. QuesTech Objection to TBG Sale
- JJ. DD Statement of Reasons for not Approving Purchase
- KK. Affidavit of Robert Rattet
- LL. Response to Ninth Interim Report of Examiner by DD
- MM. Objection of 64th Street
- NN. Order Terminating Contract and Returning Deposit
- OO. Order Granting Break Up Fees
- PP. DD Investigative Report
- QQ. Response to Ninth Interim Report dated May 31, 2005
- RR. Partnership Agreement, Rider and Corporate Financials

- SS. Dunkin' Donuts Internal E-mails and Correspondence as Part of Debtor's Discovery Demands.
5. Deposition Testimony of Richard Nieto- Admitted into evidence, as witness was unavailable.
6. Plaintiff's Trial Exhibits in Evidence.

LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Title of Document</u>
1.	Settlement Agreement dated October 18, 2002 between Dunkin' Donuts Incorporated, Baskin-Robbins USA Co., Baskin-Robbins Incorporated and Third Dunkin' Donuts Realty, Inc, et al.
2.	Dunkin Donuts Franchise Offering Circular dated 12/04
3.	Notice of Motion for Order (I) Authorizing Debtors to Conduct Auction of Substantially all of the Debtors' Interests in Certain Non-Residential Real Property Leases, Franchise Agreements and Furniture, Fixtures and Equipment Appurtenant Thereto ("Assets") free and Clear of all Liens, Claims and Encumbrances Pursuant to 11 U.S.C. Sections 105, 363(A) and (B) and 365 and Federal Rules of Bankruptcy Procedure Rules 2002, 6004 and 6006; (II) Approving Bidding Procedures and Terms and Conditions of such Auction; (III) Establishing a Deadline for Fixing Cure Amounts with Respect to the Debtors' Leases of Nonresidential Real Property; and (IV) Waiving the Requirements of Rule 6004(G) of the Federal Rules of Bankruptcy Procedure with Respect to Sales of the Debtors' Assets dated January 10, 2005
4.	Letter from Stephen Horn to the Potential Franchisees dated February 14, 2005 regarding Sale of Westchester County and Bronx County Franchises
5.	Consent Order authorizing Debtors to conduct auction (Dated 2/2/05)

<u>Exhibit No.</u>	<u>Title of Document</u>
6.	E-mail from Craig Fox to various parties dated March 17, 2005 discussing receipt of APD/Matrix Contract and possible meeting tomorrow
7.	Document from Keen evidencing receipt of Matrix Bid Deposit dated March 18, 2005
8.	Matrix Purchase and Sale Agreement dated the 18 th day of March, 2005.
9.	Fax from Robert Rattet dated March 18, 2005 enclosing Rider to Matrix Purchase and Sale Agreement dated March 18, 2005 and Form of Matrix Purchase and Sale Agreement dated March 18, 2005
10.	Emergency Application for an Order Granting Robert L. Rattet, Esq. Authority to Enter into Stalking Horse Purchase and Sale Agreement on Behalf of the Debtors, (Dated March 18, 2005, Case No. 04-22880, Docket Entry No. 273).
11.	Order Granting Robert L. Rattet, Esq. Authority to Enter into Stalking Horse Purchase and Sale Agreement on Behalf of the Debtors dated March 18, 2005
12.	Letter from Rattet to Glen Nelson dated March 24, 2005
13.	Confidential Offering Memorandum dated March 28, 2005 from Keen Consultants LLC.
14.	E-mail from C. Fox to Matrix Realty Group dated April 15, 2005 attaching contract
15.	Matrix Purchase and Sale Agreement dated April 15, 2005
16.	E-mail from Dan Krischer to H.W. Shure dated April 17, 2005 discussing property leases in question including 195 E 161 st Street, 53 Spence Place, and 42 Lake Street

<u>Exhibit No.</u>	<u>Title of Document</u>
17.	E-mail from Dan Krischer to H.W. Shure dated April 18, 2005 detailing conversation with Joe Pasternack and discussing closing in 60 days
18.	E-mail from Dan Krischer to Gary M. dated April 18, 2005 discussing a lease extension for 42 Lake Street
19.	E-mail from Dan Krischer to Matrix Realty dated April 18, 2005 discussing landlords willingness to work out a deal for 42 Lake Street property
20.	E-mail from Dan Krischer to Matrix dated April 19, 2005 discussing making files (in particular for 42 Lake Street property)
21.	E-mail from Robert Tramantano to Joseph Corneau dated April 20, 2005 regarding timeline of Keen's correspondence with Matrix
22.	E-mail from Dan Krischer to Gary M dated April 20, 2005 discussing lease option/extension for 42 Lake Street
23.	E-mail from Dan Krischer to Matrix Realty dated April 20, 2005 discussing follow-up and making contact with two landlords and reminding Glen that he is dealing with 161 st Street Landlord
24.	E-mail from Dan Krischer to Matrix Realty dated April 20, 2005 discussing price, space and the existing lease of unidentified property.
25.	E-mail from Dan Krischer to Bob Rattet dated April 21, 2005 discussing various properties including 260 Halstead
26.	Letter from Dan Krischer to Barbara Gordon dated April 22, 2005 regarding 53 Spencer Place, Scarsdale, NY
27.	E-mail from Dan Krischer to Matrix Realty dated April 24, 2005 regarding status of stores

<u>Exhibit No.</u>	<u>Title of Document</u>
28.	E-mail from Joseph Corneau to Dan Krischer dated April 26, 2005 attaching an Extension and Amendment of Lease for 260 Halstead Avenue through 2006
29.	Letter from Joseph C. Corneau to Barbara Groden of Hausman Realty Co., Inc. dated April 26, 2005 regarding Food Management Group, LLC lease of 53 Spencer Place, Scarsdale, NY
30.	Letter from Ronald Degen to Daniel Krischer dated April 27, 2005 regarding Matrix Purchase and Sale Agreement dated April 15, 2005 and discussing remodeling of shops
31.	Memo from Dan Krischer dated April 27, 2005 discussing and responding to the Letter of April 27, 2005 from Ron Degen to Dan Krischer (reminding of steps)
32.	Email from Craig Fox to Rattet and others dated 4/27/05 and noting that Matrix still interested in 149 th Street if extension can be obtained.
33.	Emergency Application and Order Approving Cancellation of Auction (Dated April 27, 2005, Case No. 04-22880, Docket Entry No. 315).
34.	Letter from Robert L. Rattet to Barbara Groden of Hausman Realty Co., Inc. dated April 27, 2005 regarding Food Management Group, LLC Lease of 53 Spencer Place, Scarsdale, NY
35.	E-mail from Dan Krischer to Bob Rattet dated April 28, 2005 regarding 161 st and message left at Landlord's office
36.	Facsimile transmittal dated April 28, 2005 to Dan Krischer from Joseph C. Corneau, Esq. attaching list of landlord contact name and telephone numbers
37.	E-mail from Dan Krischer to Matrix Realty dated April 29, 2005 regarding Landlord Waiver and Lease issues for 161 st Street, 42 Lake Street, and 53 Spencer Place and unlikelihood of lease extensions

<u>Exhibit No.</u>	<u>Title of Document</u>
38.	April 29, 2005 letter from Degen to Dan Krischer addressing issues raised in April 27, 2005 memorandum
39.	Letter from Dan Krischer to Ron Degen dated April 30, 2005 regarding Your Letter dated April 29, 2005 regarding "schedule for remodeling steps."
40.	Letters from Dan Krischer to Dunkin Donuts dated 5/2/05 enclosing copy of Loan Proposal letter and Proforma (also comments from Glen Nelson)
41.	E-mail from Gary M. to D. Krischer dated May 2, 2005 regarding 260 Halstead Avenue and discussing financial information
42.	Letter from Corneau to Degen dated May 2, 2005 discussing receipt of extension for 260 Halstead
43.	E-mail from Dan Krischer to Rattet dated May 3, 2005 discussing clarification on the franchise agreements for 149 th and 161 st and who pays for the extension
44.	E-mail from Dan Krischer to Gary M. dated May 4, 2005 regarding 42 Lake Street discussing who to send to the landlord.
45.	E-mail from Ronald Beacher to Glen Nelson of Matrix Realty dated May 4, 2005 confirming that he has been advised by Glen Nelson that Matrix will be taking title to stores in name of new entity
46.	Letter from Arthur J. Anastos of Dunkin Donuts to Joseph C. Corneau dated May 5, 2005 regarding Matrix Purchase and Sale Agreement dated April 15, 2005 enclosing the Rider to Contract for Sale
47.	Letter from Bill Bode to Krischer dated May 5, 2005 regarding draft copy of rider
48.	E-mail from Dan Krischer to Martin Kera dated May 10, 2005 regarding Matrix's retention of Mr. Kera as attorney

<u>Exhibit No.</u>	<u>Title of Document</u>
49.	E-mail from Dan Krischer to Matrix Realty dated 5/10/05 discussing banking and which bank to use.
50.	Letter from Krischer to Bode dated May 10, 2005 enclosing Matrix financial information
51.	E-mail from Dan Krischer to Rattet dated May 11, 2005 discussing stores to be visited
52.	E-mail from Dan Krischer to himself discussing items on Agenda fro Dunkin Donuts meeting
53.	Letter from R. Degen to D. Krischer dated May 16, 2005 requesting more information from Matrix.
54.	E-mail from Dan Krischer to Bob Rattet dated May 11, 2005 discussing Agenda for Dunkin Donuts meeting asking "What is the status of the leases for 1) 161 st , 2) 53 Spencer Place."
55.	Email from D. Krischer to Rattet dated 5/12/05 discussing balance allocable to 149 th Street.
56.	Letter from Rattet to Degen dated 5/13/05 discussing status of 2620 -1/2 CPA, 5 Spencer Place, 195 E. 161 st , 38 Mills Road and 392 E. 149 th Street.
57.	Dunkin Donut's spread sheet detailing EBO requirements dated 5/16/2005
58.	Letter from Kera to Corneau dated 5/17/05 confirming Matrix's interest in 307 S. Broadway.
59.	Not Included in Record
60.	E-mail from Dan Krischer to Bob Rattet dated May 18, 2005 regarding Store Visit Listing

<u>Exhibit No.</u>	<u>Title of Document</u>
61.	Notice of Motion for Order to Approve: (1) Sale of Substantially all of the Debtors' Business Assets; and (2) Ancillary Assumption and Assignment of Certain Executory Contracts and Unexpired Leases to Matrix Realty Group, Free and Clear of all Liens, Claims and Encumbrances dated May 23, 2005 and Affidavit of Service
62.	E-mail from Bill Bode of Dunkin Donuts discussing conversation with Nelson and Krischer dated 5/24/05.
63.	Letter from Dunkin Donuts to Rattet, Nelson, and Nieto. dated May 25, 2005 rejecting Matrix
64.	Due Diligence Package received by Matrix
65.	Page intentionally left blank
66.	Page intentionally left blank
67.	Email from Craig Fox to Austin, G. Gianopoulos, Borwin, Pastemak, Corneau, Tramantano, Rattet, T. Gianopoulos and Shure dated May 26, 2005 discussing Krischer's comments on May 25 letter from Dunkin Donuts
68.	Not included in Record.
69.	E-mail from Bill Totherow to Dan Krischer dated 6/2/05 discussing "hook up everybody"; Betheny Blowers has been authorized to provide information that is needed.
70.	Letter from Stephen Horn of Dunkin Donuts to Rattet and Kerr dated June 8, 2005 stating modification of disapproval of Matrix as Franchisee.
71.	Letter from Richard Nieto to Robert Rattet and H.W. Shure dated June 10, 2005 regarding cancellation of the Matrix Purchase and Sale Agreement and requesting return of bid deposit

<u>Exhibit No.</u>	<u>Title of Document</u>
72.	Not included in Record.
73.	Letter from Robert L. Rattet to Richard Nieto dated June 16, 2005 regarding In re Food Management Group, LLC et al. Lead Chapter 11 Case No. 04-228880(ASH) and declining to return \$2.4 million dollar deposit
74.	Deposition Transcript of Richard Nieto dated June 21, 2005 for Dunkin Donuts adversary proceeding
75.	Deposition Transcript of Glen B. Nelson dated June 21, 2005 for Dunkin Donuts adversary proceeding
76.	Deposition Transcript of Daniel Michael Krischer dated June 21, 2005 for Dunkin Donuts adversary proceeding
77.	Not included in Record.
78.	Not included in Record.
79.	Not included in Record.
80.	Not included in Record.
	Not included in Record.
81.	Not included in Record.
82.	Not included in Record.
83.	Not included in Record.
84.	Not included in Record.

<u>Exhibit No.</u>	<u>Title of Document</u>
85.	Transcript of Evidentiary Hearing before the Honorable Adlai S. Hardin, Jr. United States Bankruptcy Judge dated June 29, 2005
86.	Letter from Rattet to Kera and Nieto dated July 5, 2005 discussing 5/25 Dunkin Donuts letter
87.	Debtors' Verified Complaint, Adv. Proc. No. 05-8636, Docket Entry No. 1.
88.	Defendant's Answer and Counterclaim dated August 10, 2005 in Adv. Proc No. 05-8536
89.	Plaintiff's Reply to Counterclaims dated August 12, 2005 in Adv. Proc. No. 05-8536
90.	Page intentionally left blank
91.	Page intentionally left blank
92.	DD Franchise Agreement for 57 North Central Avenue, Hartdale, New York 10530 dated May 6, 2003 (Remodel Date May 30, 2011 and May 30, 2021)
93.	DD Franchise Agreement for 53 Spencer Place, Scarsdale, New York 10583 dated May 6, 2003 (Remodel Date December 23, 2010)
94.	DD Franchise Agreement for 195 East 161 st Street, Bronx, New York 10451 dated May 6, 2003 (Remodel Date Not Applicable)
95.	DD Franchise Agreement for 2501 Third Avenue, Bronx, New York 10451 dated May 6, 2003 (Remodel Date Not Applicable)
96.	DD Franchise Agreement for 50 Mamaroneck Avenue, White Plains, New York 10601 dated May 6, 2003 (Remodel Date Not Applicable)

<u>Exhibit No.</u>	<u>Title of Document</u>
97.	DD Franchise Agreement for 38 Mill Road, Eastchester, New York 10707 dated May 6, 2003 (Remodel Date April 24, 2011)
98.	DD Franchise Agreement for 570 Mamoroneck Avenue, White Plains, New York 10605 dated May 6, 2003 (Remodel Date Not Applicable)
99.	DD Franchise Agreement for 851 Yonkers Avenue, Yonkers, New York 10704 dated May 6, 2003 (Remodel Date August 24, 2011)
100.	DD Franchise Agreement for 710 McLean Avenue, Yonkers, New York 10704 dated May 6, 2003 (Remodel Date Not Applicable)
101.	DD Franchise Agreement for 260 Halstead Avenue, Harrison, New York 10528 dated May 6, 2003 (Remodel Date Not Applicable)
102.	DD Franchise Agreement for 100 Main Street (Galleria Mall), White Plains, New York 10601 dated May 6, 2003 (Remodel Date October 21, 2009)
103.	DD Franchise Agreement for 850 Bronx River Road, Yonkers, New York 10708 dated May 6, 2003 (Remodel Date Not Applicable)
104.	DD Franchise Agreement for 132 Bronx River Road, Yonkers, New York 10704 dated May 6, 2003 (Remodel Date Not Applicable)
105.	DD Franchise Agreement for 1591 Central Park Avenue, Yonkers, New York 10708 dated May 6, 2003 (Remodel Date Not Applicable)
106.	DD Franchise Agreement for 42 Lake Street, White Plains, New York 10603 dated May 6, 2003 (Remodel Date Not Applicable)

<u>Exhibit No.</u>	<u>Title of Document</u>
107.	DD Franchise Agreement for 53 Spencer Place, Scarsdale, New York 10583 dated May 6, 2003 (Remodel Date December 23, 2010)
108.	DD Franchise Agreement for 5 Goldens Bridge Shopping Center, Goldens Bridge, New York 10526 dated May 6, 2003 (Remodel Date Governed By "Additional Provisions" Addendum)
109.	DD Franchise Agreement for 467 South Broadway, Yonkers, New York 10705 dated May 6, 2003 (Remodel Date Governed By "Additional Provisions" Addendum)
110.	DD Franchise Agreement for 2620 Central Park Avenue, Yonkers, NY 10710 dated May 6, 2003 (Remodel Date Governed By "Additional Provisions" Addendum)
111.	DD Franchise Agreement for 2248 Central Avenue, Yonkers, New York 10710 dated May 6, 2003 (Remodel Date (Remodel Date Governed By "Additional Provisions" Addendum)
112.	DD Franchise Agreement for 755 North Broadway, North White Plains, New York 10603 dated May 6, 2003 (Remodel Date Governed By "Additional Provisions" Addendum)
113.	Transcript from Planet Smartplay Hearing on October 28, 1998 and exhibits thereto.
114.	Article from "Columbus Business First" dated October 31, 2003 discussing Matrix Realty Inc. purchase of Lincoln Park West Apartment Complex
115.	NYS Department of State Division of Corporations search results for Matrix Realty Group, Inc. and ZPG Associates dated June 1, 2006
116.	D&B Business Information Report for Matrix Realty Group, Inc. dated April 19, 2006

<u>Exhibit No.</u>	<u>Title of Document</u>
117.	Facsimile from Keen Consultants detailing Glen Nelson's signature for Food Management Group information and due diligence order form executed by Dan Krischer
118.	DD Franchise Agreement for 505A Bedford Road, Pleasantville, New York 10570 dated May 6, 2003 (Remodel Date Not Applicable)
119.	DD Franchise Agreement for 1483 Weaver Street, Scarsdale, New York 10583 dated May 6, 2003 (Remodel Date May 25, 2004)
120.	DD Franchise Agreement for 392 East 149 th Street, Bronx, New York 10455 dated May 6, 2003 (Remodel Date Not Applicable)
121.	DD Franchise Agreement for 2501 Third Avenue, Bronx, New York 10451 dated May 6, 2003 (Remodel Date Not Applicable)

Dated: Huntington, New York
June 13, 2008

The Law Offices of Avrum J. Rosen, PLLC
Attorneys for Matrix Realty Co., Appellant

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

(AJR-4016)

-----X
In re

FOOD MANAGEMENT GROUP, LLC,
KMA I, INC.,
KMA II, INC.,
KMA III, Inc.,
BRONX DONUT BAKERY, INC.

Case No. 04-22880(ASH)
04-22890(ASH)
04-22891(ASH)
04-22892(ASH)
04-20312(ASH)

Debtors.

-----X

FOOD MANAGEMENT GROUP, LLC,
KMA I, INC., KMA II, INC., KMA III, Inc.,
BRONX DONUT BAKERY, INC.

Adversary Proceeding
Case No. 05-8636(ASH)

Plaintiffs,

-against-

MATRIX REALTY GROUP, INC.,

Defendant.

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Amy Meachum, , being duly sworn, deposes and says, that deponent is not a party to this action, is over 18 years of age and resides at Bay Shore, New York;

On the 18th day of June, 2008, deponent served the Statement of Issues on Appeal and Designation of the Record on Appeal, via U.S. mail, to the referenced persons listed below, by depositing a copy of same in a post-paid wrapper, each addressed as shown below, in a specifically designated depository box under the exclusive care and custody of United States Parcel Service within the State of New York:

Hollie T. Elkins, Esq.
Richard C. Morrissey, Esq.
Office of the United States Trustee
33 Whitehall Street
New York, New York 10004

Warren Von Credo Baker, Esq.
Partner
Drinker Biddle
191 North Wacker Drive, Suite 3700
Chicago, IL 60606-1698

S/Amy Meachum
Amy Meachum

Sworn to before me this
18th day of June, 2008

s Avrum J. Rosen
AVRUM J. ROSEN
Notary Public, State of New York
No. 02RO4872542
Qual. in Suffolk County
Comm. Exp. Sept. 8, 2010